

LAWYERS' ADVISORY COMMITTEE MINUTES

June 8, 2005

TRENTON, NJ

Chairperson Joe Casello opened the meeting with Judges Gambardella, Ferguson and Lyons and Wizmur in attendance.

1. The minutes from the March 9, 2005 LAC meeting were approved.

2. Committee Reports:

a. Unauthorized Practice of Law Committee:

John Morton reported on the case of Darryl Chimko, appellant, currently before the Supreme Judicial Court of Massachusetts, No. SJC-09388, on consideration of certified questions from the United States District Court. John reported that an amicus brief was filed by the Real Estate Bar of Massachusetts, Inc. and that oral argument was held in early May. The matter has been taken under advisement by the Court. The case involved a Michigan attorney, Darryl Chimko, who negotiated a reaffirmation agreement with a pro se debtor, Antonio Lucas, in a bankruptcy in Worcester, Massachusetts. Chimko was not admitted in Massachusetts. Chimko communicated with Lucas on his attorney at law letterhead, negotiated the agreement and filed it with the Court with a cover letter from his law firm. The agreement contained a preamble that stated "Now comes Household Finance, by and through its attorney, Darryl Chimko".

Judge Rosenthal issued an order to show cause directing Chimko and his client to explain why they should not be sanctioned for engaging in the unauthorized practice of law. Chimko requested permission to brief the issue. The court set a briefing schedule and also ordered Chimko to file a chart of all of the cases he filed reaffirmation agreements and in what capacity, attorney, servicing agent or both. Briefs were filed along with the chart. The court found that the preparation of, negotiation of and filing of the reaffirmation agreement constituted the practice of law. The court found that Chimko's use of his attorney at law letterhead and his failure to disclose that he was not admitted in Massachusetts constituted a misrepresentation of his capacity in violation of the Rules of Professional Conduct. The Court also stated that Chimko's chart was incomplete and produced a list of other cases in which Chimko filed reaffirmation agreements.

Chimko received a cash sanction and the court made referrals to the Michigan Ethics authorities and the Massachusetts Board of Bar Overseers. Chimko appealed to the U.S. District Court.

Hon. William Young of the District Court affirmed the Bankruptcy Court decision concerning misrepresentation of capacity and referred the questions of unauthorized practice to the Supreme Judicial Court of Massachusetts.

b. U.S. Trustee Report – Anthony Sodano

Anthony Sodano was present and reported that members of the U.S. Trustee's office are going to Washington for training and preparation for implementation of the new law.

c. Clerk's Report – Scott Liddle, Chief Deputy, United States Bankruptcy Court, D.N.J.

There was no report since Jim Waldron was absent. Scott Liddle discussed the upcoming golf outing and dinner.

d. Liaison Reports

US Trustee: No report.

District Court: Frank Vecchione was absent and there was no report

NJ Bar Bankruptcy Section: Barry Frost was present representing the New Jersey Bar Association Bankruptcy Section and reported that ICLE will present five seminars on the new law. He expects in excess of 200 people at each.

Barry also reported that there will be a dinner held on October 11, 2005 to honor Judge Gambardella.

It was also reported that Ben Becker had resigned as section officer to be replaced by Gerald Gline.

Judge Wizmur reported that the State Bar Association has a web link to pro bono services and suggested that the Bankruptcy Bar have its own link on the Court website.

Internal Revenue Service: No IRS representative was present

New Jersey Attorney General: No representative from the AG's office was present

Old Business:

New General Orders: In response to questions regarding the new general orders it was the general consensus that there has been no problem with their implementation. With regard to the rule making process, it was reported that the 30 day comment period had expired and rule amendments are to be submitted to Judge Bissell for expected approval on June 23.

New Business

Computation of interest on claims: John Morton presented a memo to the LAC and expressed concern that the common practice of "grossing up" claims in Chapter 13 cases to include unmatured interest was a violation of §502 of the Bankruptcy Code and would also expose attorneys who filed grossed up claims to FDCPA actions.

It was suggested that a survey be conducted of jurisdictions where Chapter 13 trustees require claims to be grossed up. The upcoming NACCTT Annual seminar was suggested as a good place to start.

A committee consisting of Judge Lyons, John Morton, Scott Sherman and Bunce Atkinson was formed to examine the problem.

Pre-signed certifications: Joe Casello requested that John Morton report to the LAC on the use of pre-signed certifications in support of motions for stay relief. John explained that this situation first came to light in California in a case before Judge Klein in Sacramento. In that case a law firm requested that signature pages of declarations be pre-signed by the client. The firm would prepare declarations and then attach a pre-signed signature page when needed.

John explained that similar situations exist in New Jersey. He stated that the use of pre-signed certifications appeared to have taken on different formats. In some instances it appeared that the same signature page was used again and again on different motions. John stated that he will follow up with another report at the next meeting.

Closing Remarks: Judge Gambardella stepped down as chairperson of the LAC to be replaced by Judge Wizmur